

This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: April 28, 2025




Guy R. Humphrey
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re: :
 :
EAGLE-PICHER INDUSTRIES, INC., et al., : Case No. 91-10100
 : Chapter 11
 : Judge Humphrey
Debtors. :
 :

**MEMORANDUM ORDER GRANTING THE EAGLE-PICHER
INDUSTRIES, INC. PERSONAL INJURY SETTLEMENT TRUST
SUMMARY JUDGMENT ON THE MOTION OF TED JOSEPH PAFUNDI
TO ALLOW REVIEW OF A MALIGNANCY CLAIM (DOC. 7060)**

Ted Joseph Pafundi (“Movant”), appearing pro se, filed a document captioned *Motion of Pafundi to Allow Review of a Malignancy Claim* (Doc. 7060) (the “Motion”) on August 26, 2024. The Movant is the son of Joseph Pafundi (“Mr. Pafundi”). Mr. Pafundi was a claimant that, in 2001, settled his non-malignancy claim with the post-confirmation trust established by the debtors’ confirmed plan. After his settlement, Mr. Pafundi was diagnosed with mesothelioma and died on February 7, 2005. Doc. 7091, Trust Supp. Ex. F. The Movant is requesting that the Trust review a separate malignancy claim for Mr. Pafundi. As will be detailed, the mandatory procedures of the Trust were followed as to Mr. Pafundi’s claim and any malignancy claim is barred and released by the applicable provisions of the trust and state law.

The Eagle-Picher Industries, Inc. Personal Injury Settlement Trust (the “Trust”) filed a response in opposition to the Motion and the Movant filed a reply. (Docs. 7063, 7066). The court held a telephonic status conference on November 18, 2024. Doc. 7070 (scheduling order); Doc. 7076 (Audio File of the Status Conference). At the time of the conference, the court determined it would consider the Motion and the filings of the parties through the summary judgment process established by the Federal Rules of Civil Procedure, as incorporated by the Federal Rules of Bankruptcy Procedure. The court provided until January 31, 2025 to complete discovery, the submission of any supplemental evidence by February 14, 2025, responses to such evidence by February 28, 2025, and any supplemental memorandum by February 28, 2025. Doc. 7077. The court entered an agreed order to extend the date for any responsive evidence and any final supplemental memorandum to March 14, 2025.

On February 14, 2025, the Trust filed a declaration of Teena Mandele, the Executive Director of the Trust. Doc. 7091 (“Mandele Aff.”). On March 14, 2025 the Movant filed a supplement to his motion, and the Trust filed a supplemental response and two additional exhibits supported by a declaration of Trust counsel. Docs. 7092-94. The court then took the matter under advisement.

I. Procedural and Factual Background

A. Trust Agreement and Claims Procedures

The Debtors’ Third Amended Plan of Reorganization (the “Plan”) was confirmed on November 18, 1996. Doc. 5950; *See also* Doc. 7064, Trust Ex. B (confirmation order). Section 3.2.17 of the confirmed Plan provided for the establishment of the Trust with the primary purpose of resolving Asbestos Personal Injury Claims¹ in accordance with the Plan. Doc. 5453 at 41. As

¹ Section 1.1.19 of the Plan defines “Asbestos Personal Injury Claim” as:

such, the confirmation order contains and constitutes a channeling injunction which permanently enjoined all asbestos personal injury claims against the Debtors² and required any such claims to be channeled through the Trust pursuant to its governing documents, including the Trust Agreement and the Eagle-Picher Industries, Inc. Asbestos Injury Claims Resolution Procedures (the “Claims Procedures,” attached as Annex B to the Trust Agreement). Doc. 5950 at 4; see also Doc. 7064, Exs. C (“Trust Agrmt.”) and D (“Cls. Procs.”). The original version of the Trust Agreement was in effect when Mr. Pafundi settled his non-malignancy claim in 2001. Mandele Aff. ¶ 7.

Pursuant to § 3.2.17(2) the Plan, “[a]ll Asbestos Personal Injury Claims and Lead Personal Injury Claims” are required to be determined according to the procedures of the Trust and the Trust Agreement. Doc. 5453 at 41 ¶ 2. Under the confirmed Plan, “[t]he sole recourse of the holder of an Asbestos Personal Injury Claim or Lead Personal Injury Claim shall be the PI Trust[.]” *Id.* The Trust Agreement and Claims Procedures establish the exclusive criteria by which such claims are evaluated, liquidated, allowed, and paid, as well as the process for resolution of claims. See Trust Agrmt., § 3.3; Cls. Procs., § 5.

Any right to payment, claim, remedy, liability, or Demand now existing or hereafter arising, whether or not such right, claim, remedy, liability, or Demand is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, whether or not the facts of or legal bases for such right, claim, remedy, liability, or Demand are known or unknown, for, under any theory of law, equity, admiralty, or otherwise, death, bodily injury, or other personal damages (whether physical, emotional, or otherwise) to the extent caused or allegedly caused, directly or indirectly, by exposure to asbestos or asbestos-containing products that were manufactured, sold, supplied, produced, distributed, released, or in any way marketed by any of the Debtors prior to the Petition Date, including, without express or implied limitation, any right, claim, remedy, liability, or Demand for compensatory damages (such as loss of consortium, wrongful death, survivorship, proximate, consequential, general, and special damages) and including punitive damages and any Asbestos or Lead Contribution Claim.

Doc. 5453 at 12-13 ¶ 1.1.19.

² The Debtors were Eagle-Picher Industries, Inc.; Daisy Parts, Inc.; Transicoil Inc.; Michigan Automotive Research Corporation; EDI, Inc.; Eagle-Picher Minerals, Inc.; and Hillsdale Tool & Manufacturing Co.

Pursuant to the provisions of the Trust Agreement, the Trustees “shall administer the processing and payment of Asbestos Personal Injury Claims in accordance with the EPI Asbestos Claims Procedures[.]”³ Trust Agrmt., § 3.3(b)(ii). The Claims Procedures offer two options for holders of valid Asbestos Personal Injury Claims. A claimant may either opt for the discounted cash payment election or for an individualized review of their claim. See Cls. Procs., §§ 5.2 and 5.3. The discounted cash payment election provides a quicker, less expensive option for non-malignant injuries. *Id.* at § 5.2(a); Mandele Aff. ¶ 12. Claimants holding valid Asbestos Personal Injury Claims for non-malignant injuries who opt for a discounted cash payment receive a fixed payment; however, these claimants retain “the right to receive a further payment if they should subsequently be diagnosed as having an asbestos-related malignancy.” *Id.*

Alternatively, a holder of a valid Asbestos Personal Injury Claim could seek an individualized review of the claim. Cls. Procs., § 5.3. Claimants who opt for an individualized review could expect a more thorough review, generally resulting in higher payments, especially for malignant injuries, as the review includes an “evaluation of exposure, loss, damages, injury, and other factors determinative of claim value according to applicable tort law.” Cls. Procs., § 5.3(a); Mandele Aff. ¶ 14. The Trustees categorize Asbestos Personal Injury Claims by injury under the individualized review process. *Id.* at § 5.3(b). From there, some claims may be subcategorized by occupation, medical criteria, or any other factor related to the value of Asbestos Personal Injury Claims within each category. *Id.* Based upon these categories and subcategories, the Trustees “determine a limited range of liquidated values representing average historical

³ Section 2.2 of the Trust Agreement defines “EPI Asbestos Claims Procedures” at the “Eagle-Picher Industries, Inc. Asbestos Injury Claims Resolution Procedures.” Trust Agrmt., § 2.2. For purposes of the memorandum order, the terms “Claims Procedures,” “Eagle-Picher Industries, Inc. Asbestos Injury Claims Resolution Procedures,” and “EPI Asbestos Claims Procedures” may be used interchangeably.

payments by Eagle-Picher to resolve similar Asbestos Personal Injury Claims.” *Id.* An offer of payment to a claimant is “determined by assigning to their valid Asbestos Personal Injury Claim an appropriate value within the applicable range and multiplying that value by the Payment Percentage.”⁴ *Id.* The individualized review process was “designed for claimants with serious or fatal asbestos-related injuries whose Asbestos Personal Injury Claims require the added expense of individualized examination.” *Id.* at § 5.3(a). As such, the Claims Procedures provide:

Because discounted cash payment elections are a more cost effective means for determining the liquidated value of less serious, non-fatal Asbestos Personal Injury Claims, the PI Trust shall reduce the range of values for categories and subcategories of such Asbestos Personal Injury Claims to reflect the cost for providing such review to those holders of less serious, non-fatal Asbestos Personal Injury Claims who did not elect discounted cash payment under either the Plan or any subsequent discounted cash payment program made available to them by the PI Trust.

⁴ Section IV of the Claims Procedures provides:

There is inherent uncertainty regarding Eagle-Picher’s total liability to holders of Asbestos Personal Injury Claims as well as the total value of the assets available to pay valid Asbestos Personal Injury Claims. Consequently, there is inherent uncertainty regarding the amounts that claimants will receive. To ensure substantially equivalent treatment of all present and future valid Asbestos Personal Injury Claims, prior to making distributions to claimants, other than those who have elected the discounted cash payment described in Section 5.2, the Trustees must determine the percentage of full liquidated value that valid Asbestos Personal Injury Claims would be likely to receive (“Payment Percentage”). No claimant shall receive payments under the individualized review process that exceed the PI Trust’s most recent determination of the Payment Percentage. The Trustees must base this determination, on the one hand, on estimates of the number, types, and values of present and future Asbestos Personal Injury Claims and, on the other hand, on the value of the PI Trust’s assets, the liquidity of those assets, the PI Trust’s expected future expenses for administration and legal defense, and other material matters that are reasonable and likely to affect the sufficiency of funds to pay a comparable percentage of full value to all holders of Asbestos Personal Injury Claims. Periodically, but no less frequently than once every three (3) years, the Trustees shall reconsider their determination of the Payment Percentage to assure that it is based on accurate, current information and may, after such reconsideration, change the Payment Percentage, if necessary. When making these determinations, the Trustees shall exercise common sense and flexibly evaluate all relevant factors.

Cls. Procs., § IV.

Id. at § 5.3(b). Unlike those claimants who opt for a discounted cash payment, claimants who receive an individualized payment must execute a general release, forfeiting the right to further payment. *Id.* at § 5.3(f).

However, the record is undisputed that all claimants had the option to seek an individualized review. *See* Doc. 7091, Trust Supp. Ex. C (January 20, 1998 Letter to Claimants and Claimants' counsel, providing that "[t]he Trustees have determined to extend the discounted cash payment program to all claimants until further notice."). In fact, the majority of claimants with non-malignancy claims have chosen an individualized review. In the history of the Trust, 304,000 non-malignancy claims have chosen the individual review process while 273,000 chose the discounted cash payment method. Mandele Aff. ¶ 27.a. This same pattern occurred from 2000 through 2005, the time period in which Mr. Pafundi settled his claim. *Id.* ¶ 27.b. Similarly, in the last three years, more claimants with non-malignancy claims made the same choice. *Id.* ¶ 27.c. In addition, of the 273,000 claimants that chose the discounted cash payment method, only 5,000 claimants ever filed a malignancy claim. *Id.* ¶ 28. The Trust does not play any role in the choice to pursue an individualized review for a higher payout or to instead choose the discounted cash payment method and preserve the right to file a subsequent claim. *Id.* ¶ 29.

The Claims Procedures also provide for an administrative claim review process. Cls. Procs., § 5.3(e). Claimants who reject the Trustees' offer after individualized review and who wish to dispute the amount of the offer must initiate one of the alternative dispute resolution procedures established by the Trustees, such as a review by a specialized panel, mediation, or arbitration. *Id.* at §§ 5.3(e) and 7.6. Only after a claimant has exhausted other alternative dispute resolution procedures established by the Trustees can that claimant elect to submit the claim to binding or

non-binding arbitration; however, only claimants who reject a non-binding arbitration award retain the right to a jury trial to determine the liquidated value of their claims. *Id.* at §§ 5.3(e) and 7.8.

B. Retention of Jurisdiction

Pursuant to Article 9 of the Plan, the bankruptcy court retains exclusive jurisdiction over any matter arising under the Bankruptcy Code, arising in or related to the Chapter 11 Cases or the Plan, or:

9.1 To interpret, enforce, and administer the terms of the Asbestos and Lead PI Trust Agreement (including all annexes and exhibits thereto), the Asbestos PD Trust Agreement (including all annexes and exhibits thereto), and the restrictions on transfer of New Eagle-Picher Common Stock, Asbestos Personal Injury Claims, Asbestos Property Damage Claims, and Lead Personal Injury Claims contained in the Amended and Restated Articles of Incorporation and the Confirmation Order.

9.4 To hear and determine any objections to the allowance of Claims arising prior to the Effective Date, whether filed, asserted, or made before or after the Effective Date, including, without express or implied limitation, to hear and determine any objections to the classification of any Claim and to allow or disallow any Disputed Claim in whole or in part;

9.5 To issue such orders in aid of execution of the Plan to the extent authorized or contemplated by section 1142 of the Bankruptcy Code;

9.6 To consider any modifications of the Plan, remedy any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without express or implied limitation, the Confirmation Order;

9.8 To hear and determine all controversies, suits, and disputes that may relate to, impact upon, or arise in connection with the Plan (and all Exhibits to the Plan) or its interpretation, implementation, enforcement, or consummation;

9.9 To the extent that Bankruptcy Court approval is required, to consider and act on the compromise and settlement of any Claim or cause of action by or against the Debtors' estates;

9.10 To determine such other matters that may be set forth in the Plan, the Confirmation Order, the Claims Trading Injunction, or the Asbestos and Lead PI Permanent Channeling Injunction, or that may arise in connection with the Plan,

the Confirmation Order, the Claims Trading Injunction, or the Asbestos and Lead PI Permanent Channeling Injunction;

9.11 To hear and determine any proceeding that involves the validity, application, construction, enforceability, or modification of the Claims Trading Injunction or the Asbestos and Lead PI Permanent Channeling Injunction or of the application of section 524(g) of the Bankruptcy Code to the Asbestos and Lead PI Permanent Channeling Injunction.

9.13 To enter an order or final decree closing the Chapter 11 Cases.

Doc. 5453 at 64-65.

Similarly, the order confirming the Plan provides that the bankruptcy court “shall have exclusive jurisdiction over, all matters arising out of or related to the Chapter 11 Cases and the Plan or otherwise enumerated in Article 9 of the Plan.” Doc. 5950 at 18. Article 9 of the Plan further provides that “the allowance of Asbestos Personal Injury Claims . . . and the forum in which such allowance will be determined will be governed by and in accordance with the procedures established by the Asbestos and Lead PI Trust Agreement and the Trustees[.]” Doc. 5453 at 65 § 9.13.

C. Joseph Pafundi’s Claim

Mr. Pafundi elected to pursue the individualized review process through which his claim was reviewed and determined and then entered into a settlement and release agreement with the Trust to resolve his claim for a non-malignant asbestos injury on July 16, 2001. Doc. 7060, Ex. 2. During this process, Mr. Pafundi was represented by counsel through Weitz & Luxenberg. *Id.*, Exs. 1 and 1A.⁵ Over the history of the Trust, Weitz & Luxenberg has submitted “over 26,400” Trust claims. Mandele Aff. ¶ 20. Prior to entering into the settlement and release agreement, Weitz

⁵ All counsel of record for claimants, which would have included Weitz & Luxenberg, were informed in 1998 that the discounted cash option was available to all claimants and those choosing that option would retain the right to file a malignancy claim later. Doc. 7091, Supp. Trust Ex. C; Mandele Aff. ¶ 22, 23.

& Luxenburg submitted a claim on Mr. Pafundi's behalf to the Trust. Doc. 7060, Ex. 1A. The Trustees approved Mr. Pafundi's claim for a non-malignant injury. *Id.*, Ex. 1. Consistent with the Claims Procedures for individualized payments, the Trustees assigned Mr. Pafundi's claim a gross settlement value in the amount of \$4,123. *Id.* This value was multiplied by the then current Payment Percentage of 25.7%, resulting in a then current liquidation value ("CLV") of \$1,060. *Id.* The Trustees offered Mr. Pafundi two different settlement methods: (1) a two-payment plan, in which a first payment in the amount of \$530 (50% of the CLV) would be paid to Mr. Pafundi within 30 days of receipt of a signed release, with a second payment subject to recalculation, payable within two years after the date of the first payment; or (2) a one-payment plan, under which Mr. Pafundi would receive one payment in the amount of \$742 (70% of the CLV). *Id.* In a letter dated July 9, 2001, Weitz & Luxenburg "recommend[ed] that [Mr. Pafundi] accept the settlement amount that has been offered." *Id.*, Ex. 1A. Mr. Pafundi elected to receive one payment in the amount of \$742 and executed a release of all future claims on July 16, 2001. *Id.*, Ex. 2. According to Movant, Mr. Pafundi's health began to deteriorate in 2003 and he was diagnosed with mesothelioma in late 2004. Doc. 7060 at 2 ¶ 4. Mr. Pafundi succumbed to his illness and passed away on February 7, 2005. *Id.*

Over the years, Movant has attempted to contact the Trustees regarding Mr. Pafundi's settlement and his execution of the general release. *Id.*, Exs. 6 and 7. The correspondence provided by Movant indicates that he, the executive director for the Trust, counsel for the Trust, and counsel from Weitz & Luxenburg engaged in a teleconference regarding Mr. Pafundi's settlement and release in or around 2018. *Id.* Movant then continued to contact the Trustees in 2021 to discuss Mr. Pafundi's settlement, expressing his disappointment in the Trust's resolution of his father's claim. *Id.*

On September 12, 2021, Movant directed a letter to Judge Hopkins, who previously presided over this case, once again expressing his disappointment and dissatisfaction with the Trust. Doc. 7017. On May 22, 2022, the court scheduled a status hearing on Movant's correspondence for June 27, 2022. Doc. 7020. After that, Movant continued to contact the court by email regarding Mr. Pafundi's settlement, prompting Judge Hopkins to communicate directly with Movant on October 7, 2022, requesting that Movant discontinue his communication attempts with the court, as such communication violated Federal Rules of Bankruptcy Procedure 9013 and 5005(a), as well as the court's policies and procedures. Doc. 7064, Ex. E. In addition, Judge Hopkins reminded Movant that, despite his "tenuous" standing, the court permitted Movant's participation in a recent hearing, at which he was allowed to ask questions of the Trust Administrator and "received a full explanation regarding the disposition of [his] father's claim." *Id.*

II. Positions of the Parties

Movant requests that the court allow the Trust to review "a late filed Malignancy claim[.]" Doc. 7060 at 1. Movant explains that the Trust has rejected the processing of a malignancy claim for Mr. Pafundi based upon the settlement of Mr. Pafundi's non-malignant injury in 2001. *Id.* at 2. He contends that the Trustees' resolution of his father's claim contradicts the purpose of the Trust, in that treatment of malignancy claims varied based upon how a prior nonmalignant injury claim was settled.⁶ *Id.* at 3. Movant suggests that the Trustees "provided confusing and contrary

⁶ Section 2.1 of the Claims Procedures provides:

Purpose. These EPI Asbestors Claims Procedures are adopted pursuant to the Trust Agreement. They are designed to provide prompt payment to holders of similar, valid Asbestos Personal Injury Claims in substantially the same manner.

Cls. Procs., § 2.1.

instructions regarding the type of claim being offered and the requirement of a Full Release.” *Id.* at 2. He argues that the Trust should not have allowed his father’s claim to undergo the individualized review process as his father had a nonmalignant injury, and the Claims Procedures provide that the discounted cash payment election is designed for claimants suffering from a nonmalignant injury. *Id.* Movant disputes that his father was given the option to elect a discounted cash payment, claiming instead that the Trustees only offered to process Mr. Pafundi’s claim as an individualized review payment, which required his father to execute a full release of future claims. *Id.* at 2-3. Specifically, Movant criticizes the Trust’s requirement for claimants with a non-malignant injury to execute a full release of claims as a condition of payment, as such a requirement allowed the Trust “to shirk accountability for a loss for which it was clearly responsible.” *Id.* at 3. Although Movant acknowledges that his father executed a general release, Movant suggests that the court has authority to “strike a balance” and provide relief from that release pursuant to Federal Rule of Civil Procedure 60(b), made applicable to bankruptcy cases by Federal Rule of Bankruptcy Procedure 9024. *Id.* Lastly, Movant points to an amendment to the Ohio Revised Code which became effective on September 2, 2004, which now prohibits the requirement of a release of any future claim for asbestos-related cancer as a condition of settlement of an asbestos claim for a nonmalignant condition. *Id.*; *see* Ohio Rev. Code § 2307.94(C) (“No settlement of an asbestos claim for a nonmalignant condition that is concluded after the effective date of this section shall require, as a condition of settlement, the release of any future claim for asbestos-related cancer.”).

In response, the Trust reiterates the provisions of the Claims Procedures, under which individuals with valid Asbestos Personal Injury Claims were offered the choice to either receive a discounted cash payment or pursue an individualized review of the claim. Doc. 7063 at 7. The Trust explains that while claimants can choose between these options, once a claimant opts for an

individualized review and receives a payment, the claimant must execute a full release and is barred from filing future claims. *Id.* at 8. According to the Trust, Mr. Pafundi opted for an individualized review of his claim, executed a general release barring future asbestos-related claims, and received a settlement payment in the amount of \$742 for a nonmalignant injury in 2001. *Id.* at 9; see also Doc. 7060, Ex. 2. Over the years, Movant has periodically requested that the Trust accept and pay a claim based on the malignancy that caused his father's death. *Id.* at 10. The Trust has consistently denied these requests, citing the Claims Procedures and the general release. *Id.*

The Trust argues that Ohio law strictly enforces general releases and that Mr. Pafundi's release was unambiguous, covering all future asbestos-related claims. *Id.* at 11-12. The Trust also maintains that the Trust Agreement and Claims Procedures expressly restrict the Trust to paying "valid" claims, and that a released claim is not "valid" because it has been waived and is "legally deficient." *Id.* at 12-13. In addition, the Trust refutes several arguments made by Movant, including Movant's allegations regarding Mr. Pafundi's confusion of the claims process and settlement, unfair offers made to Mr. Pafundi, and statutory violations under Ohio law. As such, the Trust opposes Movant's request to allow the review of Mr. Pafundi's claim or reopen, set aside, or vacate Mr. Pafundi's 2001 settlement agreement, arguing that Mr. Pafundi's settlement is a legally binding contract and complies with the court-approved Trust Agreement and Claims Procedures.

In his reply, Movant contends that the Trustees' treatment of Mr. Pafundi's claim was inconsistent with the treatment of other similar cases. Doc. 7069 at 2. Movant asserts that Mr. Pafundi was required to sign a full release as a condition of settlement; however, according to Movant's communications with the Trust's claims administrators, a full release was not required. *Id.* Once again, Movant relies upon the amendment to the Ohio Revised Code, arguing that the

Claims Procedures do not adequately address the severity of mesothelioma. *Id.* Movant maintains his prior assertion that Mr. Pafundi was not offered a choice between a discounted cash payment and an individualized review, as the Trustee's offer letter only mentioned that Mr. Pafundi's confirmed injury was "nonmalignant." *Id.* Movant also argues that because the individualized review process was designed for more serious malignant injuries, the Trust should have only offered Mr. Pafundi the choice of a discounted cash payment, which would not have required a full release. *Id.* at 3. Furthermore, Movant suggests that both Weitz & Luxenburg and the Trust failed to effectively communicate that Trustees' settlement offer was based on an individualized review of Mr. Pafundi's claim and that acceptance of the offer would require a full release precluding Mr. Pafundi from filing a future malignancy claim. *Id.*

III. Summary Judgment Standard

A court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a) (made applicable to this adversary proceeding by Federal Rules of Bankruptcy Procedure 7056 and 9014(c)). "A 'genuine' dispute exists only where 'evidence is such that a reasonable [finder of fact] could return a [judgment] for the nonmoving party.'" *Papa v. Bolera (In re Bolera)*, 564 B.R. 569, 577 (Bankr. S.D. Ohio 2016) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Gallagher v. C.H. Robinson Worldwide, Inc.*, 567 F.3d 263, 270 (6th Cir. 2009)). A fact is material if it might affect the outcome of the suit under substantive law. *Niecko v. Emro Mktg. Co.*, 973 F.2d 1296, 1304 (6th Cir. 1992) (citing *Anderson*, 477 U.S. at 248).

"To prevail, the moving party, if bearing the burden of persuasion at trial, must establish all elements of its claim." *Bolera*, 564 B.R. at 577 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986)). "[T]he nonmoving party must come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587

(1986) (citation omitted). When reviewing a motion for summary judgment, a court views all evidence and draws all inferences in the light most favorable to the nonmoving party. *Id.*

IV. Law and Analysis

A. Standing

“The question of standing goes to the heart of subject matter jurisdiction. Standing is perhaps the most important of the federal jurisdictional doctrines.” *Leffew v. Kugler*, 220 B.R. 598, 599-600 (E.D. Tenn. 1998) (citing *United States v. Hays*, 515 U.S. 737, 742 (1995); *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 230-31 (1990)). With respect to justiciability, “the standing question boils down to whether the plaintiff has alleged a sufficient personal stake in the outcome of the controversy as to warrant the plaintiff’s invocation of the federal court’s jurisdiction and to justify the federal court exercising its remedial powers on behalf of the plaintiff.” *Id.* at 600.

“Where the plaintiff has no Article III standing to bring a case, jurisdiction is lacking and the court must dismiss it.” *IMHOFF Inv., L.L.C. v. Alfoccino, Inc.*, 792 F.3d 627, 631 (6th Cir. 2015) (citing *TCG Detroit v. City of Dearborn*, 206 F.3d 618, 622 (6th Cir. 2000)). “To have Article III standing, a plaintiff must ‘allege personal injury fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief.’” *Id.* (quoting *Murray v. U.S. Dep’t of Treasury*, 681 F.3d 744, 748 (6th Cir. 2012)). “The alleged injury must be both ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Id.* (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 180 (2000) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992))).

A person or entity does not possess Article III standing simply because that person or entity may be “collaterally affected by a court’s adjudication of another’s rights[.]” *Allstate Insurance Co. v. Wayne County*, 760 F.2d 689, 692 (6th Cir. 1985) (citing *Warth v. Seldin*, 422 U.S. 490, 499

(1975)). “Generally, to have standing in a bankruptcy case, a person must have a pecuniary interest in the outcome of the bankruptcy proceedings.” *In re Dinoto*, 576 B.R. 835, 838 (Bankr. E.D. Mich. 2017) (quoting *In re Moss*, 320 B.R. 143, 149 (Bankr. E.D. Mich. 2005)). In a bankruptcy proceeding, standing is “broadly granted” to any “party of interest.” *Khan v. Regions Bank (In re Khan)*, No. 3:12-cv-00025, 2012 U.S. Dist. LEXIS 157063, at *4, 2012 WL 5381444, at *1 (E.D. Tenn. Oct. 31, 2012) (citing *In re Combustion Eng’g, Inc.*, 391 F.3d 190, 214 n.21 (3d Cir. 2004) (contrasting bankruptcy appellate standing “with the broad right of participation in the early stages of a bankruptcy proceeding”)).

Movant’s filings do not identify what legal or pecuniary interest he holds in any claim which his father, Mr. Pafundi, held. The summary judgment evidence does not indicate if a probate estate was administered for Mr. Pafundi and, if so, whether any claim against the Trust was administered and conveyed by the estate to Movant or anyone else. There simply is no summary judgment evidence from which the court can conclude that Movant has a “concrete and particularized” injury attributable to the Trust’s actions or inactions. More particularly, Movant has failed to identify how the alleged injury to his father caused by the manner in which Mr. Pafundi’s claim was administered by the Trust has specifically resulted in an injury to Movant. While Movant undoubtedly seeks to right a wrong which he perceives his father suffered at the hands of the Trust and Trustees, this intention to remediate that perceived wrong does not rise to the level of being a “concrete and particularized” injury to Movant. Accordingly, the court finds that Movant lacks Article III standing to pursue this matter.

Nevertheless, despite the court’s finding that Movant lacks standing to pursue a malignancy claim for Mr. Pafundi, in order to fully and completely address the merits of the Motion and in the event it is determined that Article III standing is not a prerequisite of litigating the claim in the

bankruptcy court, this court will proceed to address the substantive and procedural issues relating to Movant's filings.⁷

B. The Motion Raises No Issue of Material Fact and the Trust is Entitled to Summary Judgment

Even assuming that Movant has standing to object to the final determination of Mr. Pafundi's claim, the Trust is entitled to summary judgment because all the actions of the Trust were consistent with the relevant Trust documents, and the procedures in place for all claimants.

“[T]he provisions of a confirmed plan bind the debtor . . . and any creditor[.]” 11 U.S.C. § 1141(a). When a bankruptcy court confirms a Chapter 11 plan, the Bankruptcy Code provides that “[e]xcept as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan . . . discharges the debtor from any debt that arose before the date of such confirmation[.]” 11 U.S.C. § 1141(d)(1)(A). In other words, “while confirmation of a plan of reorganization discharges the debtor from pre-confirmation debts, the confirmation substitutes the obligations of the plan for the pre-confirmation debts.” *In re Nylon Net Co.*, 225 B.R. 404, 406 (Bankr. W.D. Tenn. 1998) (citing *In re Page*, 118 B.R. 456, 460 (Bankr. N.D. Tex. 1990)). “[A] chapter 11 plan becomes a binding contract between the debtor and its creditors, and governs their

⁷ The Fourth Circuit has concluded that the case or controversy limitations imposed upon Article III courts, such as mootness, do not apply to bankruptcy courts since bankruptcy courts are not Article III courts. *Kiviti v. Bhatt*, 80 F.4th 520, 533 (4th Cir. 2023). *See also In re Technicool Sys., Inc.*, 896 F.3d 382, 385 (5th Cir. 2018) (“[b]ankruptcy courts are not Article III creatures bound by traditional standing requirements.”). *But see IRS v. Wallace*, Case No. 23-cv-1331-JES, 2023 U.S. Dist. LEXIS 199736, at *7, 2023 WL 7360830, at *4 (Ill. C.D. Nov. 7, 2023) (applying article III standing principles to its analysis of a bankruptcy court decision); *Pettine v. Direct Biologics, LLC (In re Pettine)*, 655 B.R. 196, 207 (B.A.P. 10th Cir. 2023) (“We agree with the conclusion of the courts holding that Article III standing limits the jurisdiction of bankruptcy courts. Our conclusion is based on the derivative nature of bankruptcy court jurisdiction.”). The Sixth Circuit has applied Article III standing principles to the bankruptcy courts. *Rosenfeld v. Rosenfeld (In re Rosenfeld)*, 698 Fed. Appx. 300, 303 (6th Cir. 2017) (citing *Stevenson v. J.C. Bradford & Co. (In re Cannon)*, 277 F.3d 838, 852-54 (6th Cir. 2002)) (“[T]he case-or-controversy requirements of Article III apply to adversary proceedings brought in bankruptcy courts, even though bankruptcy courts are not Article III courts themselves.”); *Bash v. Textron Fin. Corp. (In re Fair Fin. Co.)*, 834 F.3d 651, 675-76 (applying Article III standing principles). The courts which hold that Article III case or controversy limitations apply to bankruptcy court proceedings generally arrive at that conclusion due to the fact that bankruptcy courts derive their jurisdiction through the same statutory jurisdictional provision as the district courts, 28 U.S.C. § 1334, with all bankruptcy cases, matters, and proceedings being referred to the bankruptcy courts by the district courts through general orders of reference.

rights and obligations.” *Id.* (internal citations omitted). “Although creditors may not attempt to collect pre-confirmation obligations, creditors may engage in lawful collection activities to enforce plan obligations.” *Id.* “If a reorganized debtor defaults under a plan, creditors have several options, including enforcing the plan terms in any court of competent jurisdiction.” *Nat’l City Bank v. Troutman Enters., Inc. (In re Troutman Enters., Inc.)*, 253 B.R. 8, 11 (B.A.P. 6th Cir. 2000) (citing *In re Xofox, Indus. Ltd.*, 241 B.R. 541, 543 (Bankr. E.D. Mich. 1999)). “[A] state law breach of contract action may be brought for a breach of chapter 11 breach of contract obligations.” *Wade v. Farmers Natl. Bank*, No. 3:10CV-217-S, 2011 U.S. Dist. LEXIS 112778, at *9, 2011 WL 4587581, at *3 (W.D. Ky. Sept. 30, 2011) (quoting *Nylon Net Co.*, 225 B.R. at 406); see also *Paul v. Monts*, 906 F.2d 1468, 1472 (10th Cir. 1990) (finding a third-party investor to a confirmed plan not bound under § 1141, but may be bound under “general contract law”).

“In interpreting a confirmed plan, courts use contract principles, since the plan is effectively a new contract between the debtor and its creditors.” *In re Settlement Facility Dow Corning Tr.*, No. 00-00005, 2008 U.S. Dist. LEXIS 25306, at *6-7 (E.D. Mich. Mar. 31, 2008) (citing *In re Dow Corning Corporation*, 456 F.3d 668, 676 (6th Cir. 2006); *Hillis Motors, Inc. v. Hawaii Auto. Dealers’ Ass’n*, 997 F.2d 581, 588 (9th Cir.1993)). “State law governs those interpretations, and under long-settled contract law principles, if a plan term is unambiguous, it is to be enforced as written, regardless of whether it is in line with parties’ prior obligations.” *Id.* (citing *Dow Corning Corporation*, 456 F.3d at 676).

Under Ohio law, contractual language is ambiguous “only where its meaning cannot be determined from the four corners of the agreement or where the language is susceptible of two or more reasonable interpretations.” *Int’l Union v. Textron, Inc.*, No. 3:14 CV 2112, 2015 U.S. Dist. LEXIS 37797, at *9, 2015 WL 1383632, at *4 (N.D. Ohio Mar. 25, 2015) (quoting *Savedoff v.*

Access Grp., Inc., 524 F.3d 754, 763 (6th Cir. 2008) (citing *Covington v. Lucia*, 784 N.E.2d 186, 190 (Ohio 2003))). “A court construing a contract attempts to discover and effectuate the intent of the parties, which is presumed to reside in the language chosen by the parties in the agreement.” *Id.* (citing *Graham v. Drydock Coal Co.*, 667 N.E.2d 949, 952 (Ohio 1996)). “Common words appearing in a written instrument are to be given their plain and ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly intended from the face or overall contents of the instrument.” *Id.* (citing *Alexander v. Buckeye Pipe Line Co.*, 374 N.E.2d 146, 148 (Ohio 1978)). “The decision as to whether a contract is ambiguous and thus requires extrinsic evidence to ascertain its meaning is one of law.” *Ohio Historical Soc’y v. Gen. Maint. & Eng’g Co.*, 583 N.E.2d 340, 344 (Ohio Ct. App. 1989).

All the evidence available supports that Mr. Pafundi’s claim was handled in an appropriate manner following the Trust’s mandatory procedures and was processed similarly to thousands of other claims over the decades. The evidence shows that claimants with non-malignancy claims often chose an individualized review and released the Trust from future liability. The Trust mandates that claimants have that choice. Mandele Aff. ¶ 27(c). The ultimate decision of pursuing individualized review lies not with the Trust but with the claimant. That election option has been available, at the claimants’ discretion, for the entire history of the Trust.⁸

⁸ Movant also cites legislation which was proposed known as the Asbestos Compensation Act of 2000. Supp. Trust Ex. H (H.R. Rep. No. 106-782, at 47 (2000)). Assuming that this proposed legislation was intended to prohibit settling a non-malignancy claim with a release of a future malignancy claim, this bill never became law and therefore the court cannot consider it. Regardless, even if the court could consider it, the bill exempted private releases. Movant also raised that Ohio now prohibits the requirement of a release of any future claim for asbestos-related cancer as a condition of settlement of an asbestos claim for a nonmalignant condition. However, as discussed, Ohio Revised Code § 2307.94(c) became effective on September 2, 2004, which was after Mr. Pafundi settled his claim and, therefore, by the plain language of the statute, this statute does not apply retroactively to his claim.

Movant also asserts that his father was given incomplete, improper or inaccurate information by the Trust, but there is nothing in the record to support this allegation. Indeed, the only information in the record shows that Mr. Pafundi, with the assistance of experienced counsel from Weitz and Luxenberg, made the choice for an individualized review. Although Movant has consistently insisted that Mr. Pafundi was confused by the choices available to him, he provides only speculative argument in the place of evidence. The Trust played no role in the relationship or decision-making process between Mr. Pafundi and his counsel, other than providing the options to Mr. Pafundi and his counsel.⁹ Movant's allegation that the Trust did not provide the claim resolution procedures to Mr. Pafundi is speculation unsupported by the record. The mere absence of a copy in the record, for a claim settled twenty-four years ago, is wholly insufficient to vacate the prior release, particularly when Mr. Pafundi had experienced counsel. The burden to vacate the effect of the 2001 release lies with Movant, not the Trust. *Info-Hold, Inc. v. Sound Merchandising, Inc.*, 538 F.3d 448, 454 (6th Cir. 2008) (movant has the burden to seek relief under Federal Rule of Civil Procedure 60(b) by clear and convincing evidence).

Even if the foregoing analysis did not mandate granting the Trust summary judgment, Mr. Pafundi's claim is both released and time-barred.

It is released because Mr. Pafundi signed an unambiguous release by choosing, upon advice of counsel, to settle his individualized review claim. *See Selvage v. Emnett*, 909 N.E.2d 143, 146 (Ohio Ct. App. 2009) (finding that parties are bound by reasonably certain and clear settlements, absent "fraud, duress, or undue influence"). *See also Tagnetics, Inc. v. Kayser*, Case No. 3:19-cv-

⁹ In addition, to the extent Mr. Pafundi viewed his decision as a mistake, that mistake does not constitute excusable neglect. *Nemaizer v. Baker*, 793 F.2d 58, 62-63 (2d Cir. 1986) (finding that an "agreed-upon disposition" and counsel's failure to consider the consequences of a decision does not constitute excusable neglect). But again, and perhaps more importantly, the only evidence available is that Mr. Pafundi made the same choice as thousands of other claimants based upon the advice of experienced counsel.

00363, 2020 U.S. Dist. LEXIS 73741, at *14, 2020 WL 1987948, at *5 (S.D. Ohio April 27, 2020) (“If a contract is clear and unambiguous, then its interpretation is a matter of law and there is not issue of fact to be determined.” citations omitted). To repeat, Mr. Pafundi had experienced counsel, there is no evidence he was deceived by the Trust, nor is there any evidence that the Trust played any role in his ultimate decision to choose the individualized review instead of the discounted cash option. Mr. Pafundi was responsible for the release that he freely signed.

Movant’s request for a review of Mr. Pafundi’s malignancy claim is also time barred. Mr. Pafundi was diagnosed with mesothelioma at the latest in December 2004. Doc. 7091, Trust Supp. Ex. E. Mr. Pafundi died in the state of Florida on February 7, 2005. *Id.*, Trust Supp. Ex. F. Movant alleges that Mr. Pafundi, as a boilermaker, was exposed to asbestos during his employment with the New York Central Railroad following an honorable discharge from the U.S. Air Force in 1945. *Id.*, Trust Supp. Ex. G. Considering all the possible applicable state laws that could potentially apply,¹⁰ the relevant Ohio, Florida and New York statutes of limitation all would bar this claim. N.Y. C.P.L.R. 214 (three year statute of limitation for personal injury claims); N.Y. Est. Powers & Trusts § 5-4.1 (two year statute of limitation for wrongful death claims); Ohio Rev. Code §§ 2305.10 (two year statute of limitation for personal injury claims) and 2125.02(D)(1) (two year statute of limitation for wrongful death claims); Fl. Stat. Ch. 95.11(3) (four year statute of limitation for personal injury claims); Fl. Stat. Ch. 95.11.(4)(d) (two year statute of limitation for wrongful death claims). All the possibly relevant statutes of limitation have long passed.

¹⁰ The Trust was created in Ohio, Mr. Pafundi apparently lived in Florida in 2001 when the claim was settled, and died in Florida in 2005, and the Movant alleges his exposure was based on employment in New York. As the result would be the same, the court finds no need to address the appropriate choice of law.

V. Conclusion

By any measure, Mr. Pafundi led an admirable life and served his country honorably. His illness and death was a tragedy. The passage of time and the unfortunate death of Mr. Pafundi has rendered it most difficult for Movant to marshal evidence to support his arguments. And Movant offers no evidence that the Trust and the Trustees have done anything other than to observe their fiduciary duties to the Trust and strictly follow the mandatory procedures that govern the Trust. And the proceedings before the court are limited by the admissible evidence that can be introduced to support the claims brought before it. Therefore, the court grants summary judgment to the Eagle-Picher Industries, Inc. Personal Injury Settlement Trust, and the *Motion of Pafundi to Allow Review of a Malignancy Claim* (Doc. 7060) is denied.

IT IS SO ORDERED.

Copies to:

Ted Joseph Pafundi, 312 West Hills Road, South Huntington, NY 11746

Jason C. Rubenstein

Timothy M. Haggerty

(Counsel for Eagle-Picher Industries, Inc. Personal Injury Settlement Trust)